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Legal Aspects of Counterinsugency

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LEGAL ASPECTS OF COUNTERINSURGENCY

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by

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I think you will agree that the title for this morning's talk is to say the least, odd. You have studied, thought, talked about and listened to various facets of the problem of counterinsurgency–the political factors, the sociological, economic, and even the military factors. But what on earth does law have to do with this subject?

Some of you will have remembered your experience during the International Law Study earlier this year and perhaps have jumped to the conclusion that, without lawyers, the subject of counter-insurgency would be too clear–it needs someone to muddy the waters, to cast doubt and confusion where understanding and clarity existed before.

Let me illustrate. Take the definition of insurgency provided you last Wednesday from the *Dictionary of [United States] Military Terms.*[1] "Insurgency–A condition resulting from a revolt or insurrection against a constituted government which falls short of civil war. In the current context, subversive insurgency is primarily communist inspired, supported, or exploited." Notice that we are supposed to be talking about a revolt or insurrection which falls short of civil war. What is a civil war, about which we are not to talk? A search of the same dictionary provides no definition of these two words. Do you suppose that the man on the street would describe what Mr. Castro engaged in Cuba as a "civil war"? How about Ho Chi Minh's efforts–aren't they a civil war? Are North and South Vietnam two different countries, or different segments of the one country? Further, are there not sizable numbers of South Vietnamese fighting with the Viet Cong against the South Vietnamese

government forces? Are those not elements of a civil war? Could we not describe the Santo Domingo situation as a civil war? In short, doesn't the exclusion of civil war from consideration in the subject of "counterinsurgency" exclude much of the most important material to be considered? And, in any case, what reason could the authors of the definition have had for drawing a distinction between an insurrection and a civil war? Isn't the problem one of subversive aggression or wars of liberation? And can't you have a war of liberation taking the form of a civil war just as well as some other form?

There, you see, I told you that a lawyer and a legal analysis would make no positive contribution to your study of the subject of counterinsurgency. Only a lawyer could be so distracted and fail to see the real problem. As with the case of Mike the burglar who was caught red-handed and hailed into court, help from lawyers should be declined. When the judge asked Mike why he had refused to be defended by a lawyer, Mike said: "It's too late now—the time when I needed a lawyer was when I was making my plans to rob the joint. If I had had a good lawyer then, you would never have caught me with the goods."

Now therein doth lie a moral. It is frequently forgotten that one of the most significant functions that a lawyer can perform is to counsel his client and advise him about the plans and conduct which his client intends for the future. Another important function is to serve as an advocate of his client's position—to present the case in the best and most favorable light possible.

If this morning's subject were to send us off in pursuit of abstract rules of international law, derived from treaties or customary law, in the fond hope that by adequate research of the precedents at the same time so plausible and so convincing that even Mr. Lin Piao or Ho Chi Minh would recognize the justice of our cause—then indeed, law has no useful function to perform in this area. If, however, we start looking for a consistent framework in which to couch our response to the concept and practice of wars of liberation, if we start looking for the most persuasive arguments in which to dress our policies of counterinsurgency, if before taking counterinsurgency action we pause to consider the relative plausibility and persuasiveness of arguments in support which, after the act, it will be possible to make—then indeed, legal analysis may have a more useful function to perform in this area.

But, you will be saying, if that is the function to be served by legal analysis as applied to counterinsurgency, how does legal analysis differ from psychological warfare? How indeed! Look again, at the military dictionary definition of "counter-insurgency." Law isn't mentioned, but psychological action is. To whom is that psychological action to be addressed?

Part of my case to you this morning is that the Russians and Chinese are attempting to make significant use of legal-type arguments for psychological purposes. These legal-type arguments are being addressed to a wide variety of audiences–first to their own citizens, then to the citizens of countries to be subjected to "wars of liberation," then to the citizens of uncommitted countries, and last but certainly not least, to our very own citizens. Within our own country there is considerable debate concerning the legality of our policies. The casual reader of *The New York Times* and other papers cannot fail to have noticed the significant emphasis in editorials as well as in full-page advertisements of arguments addressed to the legality or illegality of our position in Vietnam. Arguments as to the legality or illegality of our actions in Santo Domingo have touched off a considerable debate in our own Senate.

Provision of a legal framework for our policies of counter-insurgency has become, then, a serious task. We need to present our own policies as clearly, persuasively, and forcefully as possible to our own people. Lack of persuasive argument supporting our actions will only lead to detraction from our political and military effort within our own country. *A fortiori,* we need a persuasive legal framework in which to set our actions for the benefit of other states, and even for the benefit of people behind the iron curtain. Psychological warfare is important, and I am suggesting to you, that the existence of a persuasive legal argument in support of our political and military actions is an important element in that psychological operation.

Khrushchev, Che Guevara, and Lin Piao have not created a concept devoid of appeal and superficial justification in this plan of "people's war" or "wars of liberation." The concept is carefully calculated to appeal to the notion, historically so important to us, that the right of revolution belongs inherently to every people against an unjust government. Just look at the way in which the military dictionary attempts to distinguish between insurgency and subversive insurgency. We cannot, with any degree of plausibility, reject the concept of the freedom of a people to revolt. Immediately therefore, the concept of "war of liberation"

puts us somewhat on the defensive. Revolution per se cannot be uulawful. What then, are the other identifiable elemeut or elements which, when added to revolution, make it unlawful or subversive?

We may be tempted to respond with the military dictionary—that element is "communist inspiration." But such "communist inspiration" may be hard to define, and even harder to prove and verify as a matter of factual report. Furthermore, to many peoples of the world, and perhaps to a number of our own people, freedom to choose a goverument, or the right of self-determination, may well involve the right of a people to choose if they wish, and that wish is democratically established, a government communist in form. For us simply to take a position, therefore, that all revolution is lawful, save only that which is communist inspired, may be a position substantially devoid of plausibility or persuasiveness, not only for world audiences but also for some of our own. Perhaps we must look further for those elements which, iu addition to revolution, are to make such revolution into subversion or subversive aggression. If the world were free of lawyers, you may say, anyone could tell me that the distinctive factor making the revolution subversive is intervention from outside, the export of revolution by one country to another. Exported revolution is just one specific form of aggression.

Bnt is the problem quite that simple? What actions constitute the "export" of revolution? Consider for a moment a few among the possible wide range of activities which China, Russia, or Cuba might take in relation to a country ripe for revolution. First might come a propaganda campaign—in the presses, over the radio, at diplomatic conferences, perhaps in the United Nations. Perhaps part of this program, possibly separate and distinct from it, might be threats as to what action might be taken if the revolution is not allowed to blossom. Next might come the receiving and training of revolutionaries, nationals of the country involved. Is the training of "students" in Cuba "Interventionary aggression" towards Venezuela? Next, might come the supplying of materiel to the revolutionary group, varying from literature and food to arms. Next might come the sending of a few "volunteers" to help organize and train the rebels—next, permission to use Cuba as a haven for the indigenous rebel forces—and so on. Where, in this list of actions, does subversive aggression begin?

Let us pause for a moment, and look briefly at the teachings of classical international law. Has a practice developed which can be appropriately used today as a yardstick in our battle with wars of liberation?

The cornerstone of traditional international law is the concept of state sovereignty–that is to say that, for the most part, a state is entitled to manage its own affairs free from direction or intervention from outside states. This particular concept is enshrined in Article 2(7) of the United Nations Charter: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state . . .." At the very next level of abstraction, this principle requires that each state and the people of that state be free to determine their own form of government, free from any such external interference. Said Professor Friedmann, one of the most prestigious writers on international law in this country, only last year: ". . . any attempt by a foreign power to interfere with internal change, either by assisting rebels to overthrow the legitimate government, or by helping the incumbent government to suppress a revolution is contrary to international law."[2] Now I want you to note this statement carefully. First, it makes clear what the consensus of writing for centuries has made clear–that for an outside state to lend assistance to a group of rebels is to interfere illegally in the internal affairs of the state in revolt. Second, it makes assistance to the government in power resisting such revolt equally illegal as interference or intervention. Third, what is proscribed is "interference with internal change," a phrase pregnant with triplets of ambiguity. What this particular quotation does not say is that while states and state departments for centuries have been uttering these propositions, many of the same states have, with some degree of regularity, been conducting their practice against very different criteria. The authors of the Holy Alliance in 1815, the Emperors of Russia, Austria, and the King of Prussia, essayed a somewhat more practical statement of policy by claiming the right to interfere in the internal affairs of any country threatened by revolution against the legitimate sovereign. You will recall that the Monroe Doctrine was formulated as a response to that policy.

Now let me illustrate what some of our own American authors are currently doing with this material. Says the same Professor Friedmann in another recent article:

> Since many of the internal conflicts, such as the internal disorders in Cyprus or the Congo, have international implications and may lead to the intervention of antagonistic powers on different sides of the conflict, nonintervention on the part of outside powers is the most desirable international policy which should, as far as possible,

> be ensured by nonintervention agreements between those concerned. The role of the United Nations in these conflicts will essentially be that of a neutral forum for mediation. In case of major intervention by outside powers, the U.N. may have to be called in to keep the opposing interventionists at arm's length . . ..[3]

Says Professor Falk of Princeton University:

> . . . internal war rages in South Vietnam, initiated by a series of rather clandestine North Vietnamese guerrilla interventions and countered by strident American military intervention in apparent violation of the 1954 Geneva Accords. Interventionary policy accounts for the most intense forms of violent conflict present in the world today.
>
> The point is not to condemn these interventions, but to suggest that a foreign policy that depends upon unilateral military interventions by one nation in the affairs of another usually violates clear norms of international law . . .. The willingness of the United States to adopt illegal interventionary tactics, under the pressure of the cold war, jeopardizes our moral commitment to a foreign policy of law-abidance, a commitment abstractly reiterated by our statesmen from many rostrums.[4]

Instead, he suggests this solution:

> But international peace is not only threatened by internal warfare. Peace is also endangered by certain repressive social policies which, if allowed to remain unaltered, will produce serious outbreaks of domestic violence. This prospect prompts the central contention of this essay–that the United Nations should be authorized on a selective basis to coerce domestic social changes. This authorization is what we refer to throughout as legislative intervention.[5]

It is interesting that, according to his argument, what would be prohibited intervention by one state becomes legal when done in the name of the United Nations.

The reason for giving you these lengthy quotations is this: With respect, I suggest that these scholars are striving for some

"neutral" principles by which the affairs of the world can, in the future, be peacefully regulated. The search for such scholarly principles may be important, but it fails substantially as an exercise in psychological warfare, just as it apparently fails in an estimate of political motivation in the world today.

But notice how this search for neutral principles can distract attention from a point of cardinal importance. If intervention in internal affairs of a state is illegal, what facts must be established to constitute proof of such intervention, and what remedies are available once a case of such intervention has been established? Given a clear plan of action for wars of liberation as described by Lin Piao, surely the obvious psychological counter, and surely a point of scholarly concern, focuses on development of criteria or standards for measuring external meddling, and on remedies for violation of those standards.[6] And I may say that the search for a remedy that does not at the same time kill the patient, is a task of monumental proportions.

Let me say again, however, that it is important that such criteria be developed and argued, not in the belief that Lin Piao will be convinced and will change his mind, but rather as necessaries to answer foreign propaganda, or for that matter, for our own domestic consumption. Given the threat as defined by Khrushchev, Guevara, and Lin Piao, I would also suggest that our psychological response must involve the reworking of the classic statement made by Friedmann. We cannot afford endorsing a policy which may preclude assistance to a government in power in an effort to combat incipient stages of subversion. At the same time, the statement of criteria for such assistance again involves a monumental problem—to give such support for the purpose of countering subversion may at the same time have the effect of impeding a truly indigenous movement for social reform.

If some of our writers have been more concerned with standards for a law-abiding world than with developing a psychological response to the concept of people's war and wars of liberation, what have the Russians been doing? In a text on international law written in Moscow and obligingly translated by the Russians into English and distributed here in 1962, is to be found a discussion of the so-called Principles of Peaceful Coexistence. The Principles represent the latest Russian use of legal analysis for psychological purposes. You may, for instance, be surprised to learn that:

> Important principles of International Law such as the sovereign equality of States, the self-determination of nations, noninterference in the internal affairs of other countries, territorial integrity, peaceful coexistence and cooperation between States regardless of their social systems and the conscientious observance of obligations assumed became the guiding principles of the world's first socialist State in its international relations.[7]

You may also be surprised at the following expansion on this theme:

> The recognition of each people's right to be master in its own country—that is, its unconditional right itself to decide its own social and political system and to determine its internal and foreign policy without any interference whatsoever by other States—offers wide opportunities for fruitful peaceful and mutually advantageous cooperation between States, regardless of differences in their social systems. In this lies the importance of the principle of nonintervention in the present-day world.[8]

Professor Lipson of Yale has offered an especially shrewd evaluation of the psychological use by the Russians of these concepts of peaceful coexistence.[9] He suggests that they are skillfully blended to appeal first to the nationalist aspirations of colonial and underdeveloped countries to make their own way free, not only politically, but also economically. Next they are designed to appeal to audiences in the United States and other western countries who would like to see a lessening of tension, accompanied probably by disarmament or reduction in military effort. Again, they appeal to the Russian audience because of the ideological split with China. These are words of peaceful competition with the West, rather than headstrong willful risk of nuclear war. In short, the Principles of Peaceful Coexistence are a masterful concoction of psychological warfare. But notice the gap between the promise and the fact. Again, our counter seems to lie in formulating the extent of that gap and giving it factual documentation.

Of course, the authors of this Russian text could not foresee that Lin Piao would get a little out of step in his speech, "Long Live the Victory of the People's War." Says he:

> In the final analysis, the whole cause of world revolution hinges on the revolutionary struggles of the Asian, African, and Latin American peoples who make up the overwhelming majority of the world's population. The socialist countries should regard it as their internationalist duty to support the people's revolutionary struggles in Asia, Africa, and Latin America.[10]

None of this, I take it, is intended to amount to interference in the internal affairs of another state.

But enough of these relative abstractions. Let us come down to a couple of specific illustrations of the importance of legal argument in support of our political and military decisions and actions. Let us see something of the use to which argumentation, both foreign and domestic, puts legal-style analysis and something of the kind of response which is required of us. In the mail the other day, I received an "Appeal to the Lawyers of the World" from the International Association of Democratic Lawyers, whose headquarters is in Brussels. This constitutes:

> . . . a solemn appeal to our colleagues in the whole world urging them to condemn the numerous and grave violations on international law by the war waged against the Vietnamese people by American imperialism.
>
> (1) International law is violated by the systematic intervention of the U.S.A. in the international affairs of South Vietnam; by the installation of governments of their choice, that are neither enjoying the confidence of the people, nor being appointed democratically, in contravention of point 12 of the final declaration of the Geneva Conference held in 1954 which was solemnly agreed to by the representative of the United States, Mr. Bedell Smith, in the name of his government.
>
> (2) International law is violated by the military aggression launched by the United States against Vietnam; by the landing in South Vietnam of foreign troops that include U.S. nationals and units from S.E.A.T.O. or A.N.Z.U.S. countries, committing acts of war also against the Democratic Republic of Vietnam, equally in contravention of point 12 already mentioned.

(3) International law is violated when in the course of this aggressive war the United States is destroying schools, libraries, pagodas, churches and hospitals under the false pretext of pursuing military aims; when the American troops are making use of horrible and prohibited weapons such as noxious gases, napalm, yellow phosphorus bombs, dumdum bullets. All these inhuman methods were banned by the Hague Conventions of 1899 and by other international norms, e.g., the Versailles Treaty of 28 June 1919 (art. 171), or the Geneva Agreement of 17 July 1925.

(4) International law is violated when prisoners are submitted to humiliating and degrading treatment by the American troops, or are savagely killed without judgment nor the legal guarantees recognized as obligatory by all civilized nations as well as by art. 3 of the Geneva Agreement of 12 August 1949; or when the same American troops massacre the civil population and submit them to barbarous tortures.[11]

And so on—the hand behind the pen is clear.

Now, you are probably saying, that is a concoction of lies to which our response should be simply that—answering such a document involves no exercise in legal analysis and applied psychology. To a considerable extent you would be correct. But notice the subtlety with which some of the issues are woven in. Let us just take as an example, the first paragraph I read you. That we have a large army in Vietnam is clear, and that the presence of such an army has a substantial effect on the internal affairs of Vietnam is equally clear. Is this "intervention"? Well, you say, our response rests on the fact that we were requested to help by the Vietnamese government. But then notice that the same paragraph suggests that our host or inviting government is in fact our own puppet, which has not been "democratically appointed" in accordance with the Geneva Accord of 1954. You suspect that the Ky regime was, in fact, not appointed by a 51 percent or better majority of every adult entitled and willing to vote in South Vietnam. So to counter this, you begin an argument that, in an underdeveloped and undereducated country or community, full-flowered democracy is a factual impossibility. Besides, you say, look at Ho Chi Minh. Now this second argument is interesting. With the audiences to which this material is presented, the argument that the other side is doing the same bad things, is peculiarly

unpersuasive. The first argument is the one which needs to be presented, but notice the technique. The charges are so framed, that an accurate response becomes so detailed, intricate, and tied in with legal argumentation that the audience may be lost in the middle of the answer.

The aim of this material is to confuse. And the answer or psychological counter is not a point by point refutation of their thesis–rather, it should or even must be found in a coherent policy. We should be in a position to explain what that policy is–that it has a measure of objectivity–that is to say that it is not an action adopted ad hoc, but is the application of principles established as such and consistently advocated and followed by us in our foreign relations. Such a policy requires focusing on the concept of "war of liberation," upon the fact of external interference with the political balance in South Vietnam by Ho Chi Minh and the Chinese–this involves the development of criteria, mentioned earlier, against which we can judge and establish such interference, and it requires the development and advocacy of remedies to be taken in the face of such interference violative of our proclaimed standards. Law is the antithesis of arbitrary action –and legal analysis and argumentation, to be persuasive, must be founded in consistency of principle and, as far as possible, in application of such principle.

Now, you are probably saying, who needs to respond to a position like that of the International Association of Democratic Lawyers? It is, and this must be patent to the reader, a tissue of lies. First, you are on notice that the Russians are a careful, calculating group, who do not do many things without apparent object. They think this kind of propaganda is worthwhile–be careful of underestimating their judgment. Remember the message of this counterinsurgency program–that the battle is one for people, and the people of that phrase are being exposed to this kind of argumentation. That it needs answering in foreign audiences can best be illustrated by referring to the extent to which some of the arguments therein advanced have received a measure of support and sympathy within our very own country. Let me read to you a short passage from a speech delivered on September 23, 1965:

> In Vietnam, we have totally flouted the rule of law, and we have flouted the United Nations Charter. This lipservice given by the United States to the United Nations and its international law provisions and procedures has done our country great injury among many international lawyers

> around the world. Our waging an undeclared war in southeast Asia in flagrant violation of our oft-expressed pretense that the United States stands for the substitution of the rule of law for the jungle law of the military claw in meeting threats to the peace of the world, has done great damage to our reputation for reliability in international affairs. Our good reputation in world affairs previously held by millions of people in the underdeveloped areas of the world has been tarnished by our unjustified warmaking in southeast Asia.[12]

These are words of the Honorable Wayne Morse spoken on the floor of our Senate. It seems we have something of a missionary job to do in our own country!

Now, for a second illustration of the importance of legal analysis, let us look at another recent counterinsurgency situation—the Dominican Republic. Remember that the thesis is this: Our political and military actions need to be explained by an argument of their legality presented as persuasively as possible.

What we had, obviously, in the Dominican Republic, was an incipient political revolution. I take it that there was and is little doubt that substantial numbers of citizens of the Dominican Republic were so dissatisfied with their existing government that they proposed to resort to revolution as an answer. Our problem was equally obvious. The existence of a fighting civil war provides an excellent opportunity for communist trained, and perhaps even exported, leaders to penetrate and then take over one of the forces in the revolution. The communist handbook is simple and direct in ordering party members to capitalize, however and whenever possible, on issues that are politically divisive. Their ability to so capitalize can be illustrated all the way from Cuba, even to perhaps some of our university campuses. But, and this is important, we were not in a position to deny that there was an indigenous revolution—that people of the Republic were asserting their freedom, as a last resort, to revolt against what they considered to be an unfair and unrepresentative government. What then, could we make by way of legal argument to explain that our intervention was not inconsistent with or destructive of this inherent right of revolution, while still taking steps of military intervention deemed by our government necessary to prevent communist subversion of this indigenous revolution? Said Mr. Meeker, the Legal Adviser to the State Department:

> We landed troops in the Dominican Republic in order to preserve the lives of foreign nationals—nationals of the United States and many other countries. We continued our military presence in the Dominican Republic for the additional purpose of preserving the capacity of the OAS to function in the manner intended by the OAS Charter—to achieve peace and justice through securing a cease-fire and through reestablishing orderly political processes within which Dominicans could choose their own government, free from outside interference.[18]

Now this statement of our position is not without its difficulties, in terms of psychological persuasion. Notice first, its apparent inconsistency with the concept of ultimate freedom of revolt. This appears to say that if you revolt, we reserve the right to step in and prevent the fighting so that a new government may be chosen democratically, i e., by supervised voting, after debate and discussion of the problem and the proposed party platforms. This indeed, is the advocacy of a principle considerably adapted from that of the ultimate freedom to revolt. Notice also, that any such "police" intervention may have a significant effect on the relative strength in any subsequent election of the government previously in power and the rebel group.

The cornerstone of our political and military decision is clear. We are all too well acquainted with the communist pattern of infiltration and subversion, and for our purposes, it does not much matter whether that infiltration is effected by Dominicans or by communist operatives brought in from other countries. The thing that counts in the end is simply this: Does the government ultimately achieving power answer directly to communist centers? Is it subservient to communist control, and will it take communist steps to prevent any future unfortunate revolt or attempt at democratic selection of government? In short, will the establishment of such government preclude for the future a free demonstration of political choice by the people of the country?

The selection of a cornerstone of legal analysis, of the most persuasive argument in explanation of this policy, is much more complex. Our statement and repetition of patterns of communist behavior fails to persuade many of our own citizens, let alone many Latin American audiences. Moscow says they did not have anything to do with a take-over of any revolution, and we, as the active intervening parties, are suddenly cast with the burden of

proof to establish as the price of legalizing our position, that, in fact, the revolution was being substantially affected or controlled by infiltrated communist operatives. That is no mean burden of proof.

On the other hand, if (and I am not necessarily saying we should), we adopted the following proposition as our neutral principle or policy, we could avoid the foregoing burden of proof problem. That principle might be: Wherever possible, widespread civil war and bloodshed should be forestalled by intervention of a police force designed to keep the peace while at the same time laying a basis for future democratically organized and supervised elections. We could then rely simply on the outbreak of substantial civil war and widespread bloodshed and breakdown of the essential processes of government. For such a principle to be effective, however, we have to be in a position to argue that this is not a policy conceived on the spur of the moment to take care of this specific incident–in short, that it is a policy we plan on adhering to consistently. And if this policy were to be selected as such principle, it must be capable of withstanding analysis and criticism.

Without looking up any official document or statement, I could give you the gist of a Russian response. But, in this instance, that is unnecessary since we have vocal criticism of the policy in the Dominican Republic right here at home. Our policies or principles are being put to the test of analysis and criticism right here, let alone before foreign audiences.

Senator Fulbright has said of our actions there:

> The prospect of an election in nine months, which may conceivably produce a strong democratic government, is certainly reassuring on this score, but the [fact] remains that the reaction of the United States at the time of acute crisis was to intervene forcibly and illegally against a revolution, which, had we sought to influence it instead of suppressing it, might have produced a strong popular government without foreign military intervention.
>
> Since just about every revolutionary movement is likely to attract Communist support, at least in the beginning, the approach followed in the Dominican Republic, if consistently pursued, must inevitably

> make us the enemy of all revolutions and therefore the ally of all the unpopular and corrupt oligarchies of the hemisphere.[14]

In contrast, Under Secretary of State Mann has said:

> When, in other words, a Communist state has intervened in the internal affairs of an American state by training, directing, financing, and organizing indigenous Communist elements to take control of the government of an American state by force and violence, should other American states be powerless to lend assistance? Are Communists free to intervene while democratic states are powerless to frustrate that intervention?[15]

From the point of view of legal analysis and persuasive argument, both these statements are interesting. The Senator's statement brands our action as "illegal," without amplification. That such amplification could be provided is clear. The introduction of our army into the country of another state calls for the clearest of supporting arguments to escape the charge of illegality. And the fact that a political faction in the Dominican Republic decided to invite us adds a little, but not very much in the circumstances, to our position. On the other hand, Secretary Mann's analysis assumes that communist "indoctrination" of certain political rebels, who might very well have been natives of the Republic, constituted intervention which, impliedly, authorized us to take a counterremedy in the form of an armed landing. Perhaps, in the long run, the most persuasive argument runs along lines suggested by Mr. Mann, rather than along lines of a principle of preventing bloodshed and facilitating free elections.

Suffice it to say that we need a coherent and consistent policy. Senator Fulbright underlines the importance of such a policy consistently applied when he says that potential revolutionaries in Latin America may regard our action in the Dominican Republic as an explicit declaration of our position in favor of status quo government, no matter how bad it may be, and against revolution. And so, we come back full circle to the problem: how to formulate a policy to best support our political and military decisions taken in the context of counterinsurgency–how to distinguish in that policy between freedom of revolution and proscription of wars of liberation and people's war.

That problem is reported to be under consideration in our discussions with Latin American countries, as late as last Thursday. *The New York Times* of that day[16] carries a story of Mexican views on a proposal for collective Latin American action in the event of complete breakdown of order and authority in one of the OAS states.

Fortunately, this morning, I have the luxury of criticizing the statements and writings of others, without any accompanying responsibility for defining policy goals in this area. There are, however, several factors which will, in my opinion, continue to affect the search for most effective policies and legal analyses to counter the threats posed by wars of liberation.

First, the persuasiveness of any legal analysis is important to our domestic population. The ability to offer a clear and consistent purpose, rationale, and demonstration of its application to any current fact situation will have significant impact on the domestic support which political and military decisions receive from our own population. For this reason, such purposes and policies must be consistent with our domestic governmental ethic. That ethic clearly believes in a right of revolution, and in the right of a people to choose their own form of government. This means freedom from communist subversion, but it also means freedom from United States support of unpopular and dictatorial regimes. Our counterinsurgency policy deals with stability of governments, but it must be so framed as to distinguish, as far as is possible, between indigenous revolution and communist subversion. Not every act of subversion can be allowed to taint a revolutionary group and we must refine a policy tailored to identify and brand those aspects of wars of liberation which seek to climb on the back of an indigenous movement.

Second, to be as persuasive as possible, our policy must seek to share counterinsurgency, responsibility, as far and as widely as possible. By way of illustration, the function of a lawyer in the Department of State would have been fantastically easier if the force which went into the Dominican Republic had been an OAS force, sent there pursuant to a resolution of that organization, and in implementation of a stable and consistent policy against insurgency formulated by that organization. Such a sharing of responsibility requires that our policy be consistent then, not only with our own domestic ethic, but consistent, as far as is possible, with corresponding ethics outside the communist

countries. We must recognize that in these other countries which, in many cases are backward and underdeveloped, revolution continues to play an important function in change and reform of government. Our policy cannot condemn revolution as such, even when accompanied by bloodshed, nor can it condemn revolution merely on the grounds that communist groups have joined in with it.

Third, that policy must bring sharply into focus not only the problem of identifying what constitutes illegal intervention through communist subversion, but also the ingredients of appropriate remedies for any such violation of the established policy.

Fourth, we must recognize that consistent application of this policy is important, and that departures from it, to meet the stresses of ad hoc situations of the moment, may be very costly in the long-run effectiveness of the psychological purpose.

Fifth, we must continue to recognize that such a policy does serve a psychological purpose of importance both with our own people and abroad. But the object of having the policy is not to seek abstract standards to govern in a perfect law-abiding world, but rather to meet the practical day-to-day threats posed, and to be posed, by wars of liberation.

BIOGRAPHIC SKETCH

Professor James F. Hogg, born in Wellington, New Zealand, is a Professor of Law at the University of Minnesota. He received B.A. and LL.M. degrees from the University of New Zealand in 1949 and 1951. He was admitted to the Bar as a barrister and solicitor and for a short time practiced law with a firm of attorneys in Wellington. From 1953 to 1955 he was a student at the Harvard Law School and received an LL.M. in 1954 and an S.J.D. in 1959. He taught at Victoria University College in Wellington for the academic year 1955 and has been a member of the Minnesota Law School faculty since 1956. He has also taught as a visiting professor at Columbia University Law School and the University of Chicago Law School. He is the author of several law review articles on subjects of international law, including treaties, their interpretation and the International Court of Justice. He is a member of the American Society of International Law and of the International Law Association.

For the academic year 1965-66 he is on leave from the University of Minnesota and is occupying the Chair of International Law, Naval War College.

FOOTNOTES

1. *Dictionary of United States Military Terms for Joint Usage,* 1 Feb. 1964, JCS Pub. 1.

2. *The Changing Structure of International Law,* Columbia University Press, 1964, at p. 265.

3. "The Role of International Law in the Conduct of International Affairs," *20 International Journal,* 1965, p. 158 at p. 167.

4. "The Legitimacy of Legislative Intervention by the United Nations," in *Essays on Intervention,* ed. by Roland J. Stanger, Ohio State University Press, 1964, at p. 34.

5. *Id.* at 33.

6. See, for instance, Fisher, "Intervention: Three Problems of Policy and Law," *Id.* at 7 et seq.

7. *International Law,* Foreign Languages Publishing House, Moscow, 1962(?) at p. 9.

8. *Id.* at p. 114.

9. "Peaceful Coexistence," *29 Law and Contemporary Problems,* p. 871 (1964).

10. Foreign Broadcast Information Service, 3 September 1965.

11. No attempt is here made to identify and correct the numerous false statements, misrepresentations and half-truths contained in the above statement.

12. 89th Congress, 1st Sess., September 23, 1965.

13. "The Dominican Situation in the Perspective of International Law," Vol. 53, *Dept. of State Bulletin,* 12 July 1965 at p. 62.

14. As reported in *The New York Times,* 16 September 1965.

15. "The Dominican Crisis: Correcting Some Misconceptions," Vol. 53, *Dept. of State Bulletin,* 8 November 1965 at p. 731.

16. 9 December 1965.